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Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-192

JAMES JOHNSON,

Petitioner,

versus

OIL TRANSPORT COMPANY, INC.,
THE FLYING A, AND
BENDER WELDING & MACHINE COMPANY, INC.,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

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OF COUNSEL

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Petitioner bases his application for *certiorari* on a statement of fact wholly unsupported by the record.

The facts as stated by the Court of Appeals are:

> "On June 8, 1966, the vessel was placed in dry dock. Work was begun on the following day and completed nine days thereafter on June 18, at a total cost of $29,160. The accident occurred in the interim, on June 12. During the time the vessel was in dry dock, electrical power and water for fire protection were shorebased and furnished by Bender. No meals were prepared

and no watches were kept on board ... One propeller of the twin-screw vessel had been removed ... [N]o officer or crewman either went aboard the vessel or was present at the shipyard with the exception of the chief engineer, who was quartered ashore in the City of Mobile and who visited the yard periodically to inspect the work." 440 F2d 109, 113 (CA 5-1971).

* * * *

"In the present case there was much more than mere relinquishment of possession and control of the vessel. No part of the ship or its machinery was in anywise defective, the vessel did not cause equipment to become defective, and the injury was not sustained aboard the vessel. The worker, who never went aboard the ship at any time, fell from a scaffold which was rented and erected by the ship repairer. The scaffold did not touch the vessel, and the work was under the exclusive charge of the ship repairer. The injury occurred off the vessel when Johnson fell from the scaffolding to the floor of the dry dock." 440 F2d at 115-116.

In *Moye vs Sioux City & New Orleans Barge Lines, Inc.*, 402 F2d 238 (CA 5-1968), cert. den., 395 US 913, in which Chief Judge Brown concurred, the Court of Appeals for the Fifth Circuit held:

"Upon the complete surrender of control of the barge by Sioux City to Saucer for repairs, there was no duty owed by Sioux City to protect Moye from risks inherent in carrying out the contract . . ." 402 F2d at 241.

It is respectfully submitted that the application for *certiorari* should be denied.

Respectfully submitted,

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of
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New Orleans
September 3, 1971

PROOF OF SERVICE

I, Brunswick G. Deutsch, one of the attorneys for Respondent herein and a member of the Bar of the Supreme Court of the United States hereby certify that on the 3rd day of September, 1971, I served three copies of the foregoing brief in opposition of Respondent on James Johnson by mailing the same in duly addressed envelopes, with first-class postage prepaid, to Ross Diamond, Jr., Esq., 610 Van Antwerp Bldg., Mobile, Alabama, 36601, counsel for Petitioner, James Johnson; and to A. Clay Rankin, III, Esq., 3000 First National Bank Bldg., Mobile, Alabama, 36602, counsel for Respondent, Bender Welding & Machine Company, Inc.

Brunswick G. Deutsch